

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Review of the Section 251 Unbundling)	
Obligations of Incumbent Local Exchange)	CC Docket No. 01-338
Carriers)	
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications Act of)	CC Docket No. 96-98
1996)	
)	
Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	

COMMENTS OF CATENA NETWORKS, INC.

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Summary

Catena Networks, Inc. (“Catena”), as a manufacturer of technology that provides broadband access using wireline facilities, has a strong interest in seeing the elimination of the current investment disincentives to deployment of such equipment. Uncertainty and the threat of unbundling (and then re-bundling) at non-compensatory prices that are based on hypothetical, incremental costs is stifling investment in advanced services technology by the ILECs. Catena can attest to the fact that these disincentives are not mere posturing by the wireline carriers – investment in Catena’s systems, which can provide DSL service to customers in rural and suburban areas served by certain legacy remote terminals, has slowed markedly, notwithstanding their proven economic and technical capabilities.

The Commission appears to be headed down the proper path in its efforts to develop a rational, coherent broadband policy through a series of interrelated proceedings, including this one. Catena urges the Commission to complete these proceedings as rapidly as possible, and in a manner that eliminates the carriers’ disincentives for investment in broadband capabilities and fosters facilities-based competition. In addition, Catena urges the Commission to address even more quickly some of the discrete remote terminal issues that are already ripe for resolution.

In developing its broadband policy, including the re-examination of the unbundling rules, the Commission must avoid adopting rules that would disfavor particular technology such as Catena’s, which involves significant use of the embedded plant in lieu of new construction or wholesale replacement of remote terminals. Finally, the Commission must ensure that the comprehensive broadband policies adopted in these

interrelated proceedings apply uniformly across all platforms and across all of the states.

If it fails to do so, uncertainty and investment disincentives are likely to be re-introduced on a state-by-state basis. Catena believes that the series of steps recommended herein will best serve the public interest.

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COMMENTS OF CATENA NETWORKS, INC.

Catena Networks, Inc. (“Catena”) takes this opportunity to comment on several aspects of the Commission’s initial triennial review of its unbundled network element (“UNE”) policies to determine whether any changes are necessary.¹ The Commission is evaluating how to update its unbundling policies on a comprehensive basis in light of changes in technology and circumstances. As explained below, Catena believes the Commission must take steps to ensure that the unbundling obligations imposed on the incumbent local exchange carriers (“ILECs”) do not serve as a deterrent to investment in technologies that can support advanced broadband services.

¹ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, FCC 01-361, released December 20, 2001 (hereafter “Notice”).

I. INTRODUCTION

As a leading developer of advanced communications systems, Catena is highly interested in this proceeding and well qualified to address some of the issues raised in the *Notice*. Catena is a privately held corporation, headquartered in Redwood Shores, California, with its research and development operation in Kanata, Ontario, Canada. Catena was founded in December 1998 with a vision to create the New Access Architecture for the Converged Public Network and, in the process, make broadband access as ubiquitous as plain old telephone service (“POTS”). Catena has also actively participated in several of the Commission’s predecessor proceedings concerning deployment of advanced services.²

Catena has approached the deployment of broadband services from the technical, not regulatory, perspective. Catena’s management and staff bring with them a wealth of telecommunications engineering experience. The Catena development team consists of some of the industry’s top design and system engineers in the access technology field, with extensive experience in developing and deploying high-volume POTS, DSL, cable telephony, cable data and ISDN. Specifically, the team draws on an unparalleled record of delivering high-performance, cost-optimized systems for high-volume deployment—with more than 150 million lines of existing designs currently in service worldwide.

As the explosive growth in Internet usage continues to inundate today’s telephone network, Catena believes its breakthrough innovations will help revolutionize the subscriber interface to the converging voice and data networks. Catena markets its

² See, e.g., Comments of Catena in CC Docket No. 98-147, filed October 12, 2000; Reply Comments of Catena in CC Docket No. 98-147, filed November 14, 2000; Comments of Catena in CC Docket No. 98-147, filed February 27, 2001.

products to service providers, including the ILECs and the competitive local exchange carriers (“CLECs”), seeking the ability to transform their subscriber lines for the efficient delivery of broadband data and voice services. Carriers deploying Catena’s broadband systems have the ability to carry out a line-by-line migration from today's circuit-switched network to the packet-based network of tomorrow, while retaining their reliable lifeline services. Several carriers have already begun to deploy Catena’s groundbreaking technology.

Thus, Catena is poised to help bring broadband capabilities throughout the country. Unfortunately, regulatory uncertainty and the prospect of uneconomic unbundling obligations have slowed, and in some cases stopped, ILEC investment in new technologies capable of providing advanced broadband services. In light of the heightened importance of the availability of advanced telecommunications to our country’s educational system and economy,³ Catena urges the Commission to act expeditiously in resolving the regulatory uncertainty and disincentives surrounding ILEC deployment of broadband capabilities.

II. THE COMMISSION MUST ACT QUICKLY TO ELIMINATE THE CURRENT DISINCENTIVES TO INVESTMENT IN ADVANCED TECHNOLOGIES

Catena applauds the Commission’s efforts to address the broadband issues comprehensively through a series of interrelated rulemaking proceedings, rather than through piecemeal resolution of discrete issues as they bubble to the forefront. The Commission has initiated several complementary proceedings, which should result in a

³ See, e.g., *Wall Street Journal*, March 28, 2002 at p. B-4 (discussing continuing growth in telecommuting).

holistic and well thought out approach to broadband regulation that incorporates competitive concerns (both inter- and intra-modal) as well as public interest considerations. In addition to this proceeding concerning the ILECs' unbundling obligations, the Commission is concurrently reviewing the appropriate regulation of ILEC broadband services,⁴ the appropriate framework for broadband Internet access over wireline facilities,⁵ and the appropriate framework for broadband access over cable facilities.⁶

While Catena believes that such a comprehensive approach to broadband regulation will lead to a cohesive and rational regulatory structure, Catena also urges the Commission to be mindful of the need to resolve these issues as quickly as possible. Technology continues to evolve, and more importantly, the marketplace does not stand still. Thus, the distortions caused by the current uncertainty and disparate treatment of service providers will increasingly impact the service providers, consumers and manufacturers of broadband technology like Catena.

As the ILECs currently seek to determine whether and how quickly to invest in different technologies for broadband services, they must make these decisions without

⁴ *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, FCC 01-360, Notice of Proposed Rulemaking (rel. Dec. 20, 2001).

⁵ *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities, Universal Service Obligations of Broadband Providers*, CC Docket No. 02-33, Notice of Proposed Rulemaking (rel. Feb. 15, 2002).

⁶ *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities and Internet Over Cable Declaratory Ruling*, GN Docket No. 00-185, CS Docket No. 02-52, FCC 02-77, Declaratory Ruling and Notice of Proposed Rulemaking ("Cable Modem Framework Proceeding") (rel. Mar. 15, 2002).

knowing (1) if they will be required to unbundle some or all of the facilities and services they seek to deploy; (2) assuming they are required to unbundle some or all of those facilities or services, whether they will be required to sell those elements to competitors at non-compensatory prices; or (3) what access or collocation rights for their competitors are triggered by the deployment of particular advanced services technologies. Moreover, the answers to these critical questions presently can vary from state to state, further compounding the confusion and dampening investment.

These disincentives are not mere hypothetical concerns or posturing by the ILECs. Catena has successfully developed technology that makes DSL broadband services practical and economical for deployment in certain legacy remote terminals – the CNX-5 Broadband ADSL system for upgrading Lucent SLC® Series 5 (“SLC-5”) Digital Loop Carrier systems.⁷ Catena’s technology has been successfully tested in laboratories and field trials by most of the largest ILECs in the United States, and CNX-5 systems have already been commercially deployed by several mid-size ILECs. However, despite the now proven technical and economic performance of Catena’s technology, several carriers have expressed reluctance to deploy this product because of the current

⁷ The CNX-5 system contains three elements: (1) the Catena Enhanced Channel Unit integrated linecard that provides two POTS and two DSL lines (which fits in the current SLC-5 two POTS linecard port); (2) the Catena Enhanced Channel Test Unit ATM multiplexer card for multiplexing and management of the DSL service (which fits in the current SLC-5 channel test unit and also provides that functionality); and (3) the CatenaView Element Management System (which provides provisioning and management functionality for the DSL service and integrates with upstream Operation Support Systems). The CNX-5 system has the potential to bring high-speed Internet access service to a significant portion of the United States that would otherwise be unlikely to be served by any broadband carriers. Some 20 million lines are served at present by the SLC-5 remote terminals, many of those in rural or suburban areas.

regulatory uncertainty over unbundling, pricing and access. Moreover, other Catena customers are choosing to deploy the CNX-5 products in some states within their territories, but not others, because of specific or proposed regulatory treatment by the State commissions.

Catena is not alone in these experiences. As the Commission acknowledged in its Cable Broadband Structure proceeding, DSL deployment by the ILECs is being scaled back.⁸ Moreover, Catena observes that several telecommunications equipment manufacturers have halted or decreased their DSL technology activities. As is evidenced by what is happening (or not happening) in the marketplace, the current regulatory environment is retarding the investment in new technologies that can provide broadband access to all Americans, to the detriment of the public interest.

Catena thus urges the Commission to conclude the interrelated rulemaking proceedings concerning broadband technologies as expeditiously as possible so as to minimize the adverse effects of the current regulatory uncertainty. Catena recognizes that it will take some time to collect and digest a full record on these complicated issues. Nevertheless, the Commission can take some interim steps with regard to discrete remote terminal issues based on the information compiled in the predecessor proceedings. Addressing these issues immediately will remove some of the regulatory uncertainty facing carriers presently, and thus may spur investment decisions.

The Commission previously raised questions with regard to the deployment of advanced services in remote terminals in rulemaking proceedings commenced in August,

⁸ See *Cable Modem Framework Proceeding* at n. 9.

2000 (Further NPRM on collocation)⁹ and January, 2001 (Third Further NPRM on collocation in remote terminals, including next generation digital loop carrier systems).¹⁰ Catena participated in both of those proceedings.¹¹

Some of the issues raised in those proceedings are subsumed within and thus should be addressed as part of the Commission's comprehensive review of broadband issues.¹² However, several of the issues raised in those proceedings are ripe for resolution now, because there is a fully developed record. Moreover, the Commission can decide those particular issues without pre-judging the current proceedings.¹³

Catena thus urges the Commission to issue an order promptly to address several of the remote terminal collocation issues raised in the earlier proceedings. Catena

⁹ *Deployment of Wireline Services Offering Advanced Telecommunication Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, FCC 00-297 (rel. Aug. 10, 2000).

¹⁰ *Deployment of Wireline Services Offering Advanced Telecommunication Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket Nos. 98-147 and 96-98, 16 FCC Rcd 2101 (rel. Jan. 19, 2001).

¹¹ See, Comments of Catena in CC Docket No. 98-147, filed October 12, 2000; Reply Comments of Catena in CC Docket No. 98-147, filed November 14, 2000; Comments of Catena in CC Docket No. 98-147, filed February 27, 2001.

¹² The Commission explicitly incorporated the record in those proceedings into this rulemaking. *Notice* at ¶¶ 11 and 14.

¹³ Indeed, in this *Notice* the Commission indicated that it would address these discrete remote terminal collocation issues in a separate proceeding. *Notice* at n. 46. In making clear in such a discrete ruling that it is not pre-judging the outcome of the broader issues raised in the interrelated proceedings, the Commission should also take that opportunity to make clear that it will preempt any state commission decisions related to these broader issues that pre-judge and are inconsistent with the broadband policies ultimately adopted by the Commission in the interrelated proceedings.

believes, based on the records developed in the earlier proceedings, that the Commission should: (1) reject the proposal to impose an obligation for line card collocation; (2) reject the suggestion that deployment of POTS splitters be mandatory and serve as the demarcation point for unbundling and/or interconnection; and (3) reject the proposal that remote terminal cabinets be designed and deployed with extra space to accommodate requests for collocation.¹⁴ Catena believes that taking these prompt, interim steps would well serve the public interest.

III. IN ADDRESSING THE ILECS' UNBUNDLING OBLIGATIONS, THE COMMISSION MUST ELIMINATE DISINCENTIVES FOR INVESTMENT IN NEW TECHNOLOGY

In this proceeding, the Commission is seeking to update its unbundling rules to take into account developments in the marketplace and changes in the ILECs' networks. In recognition of the potentially conflicting interests at stake, as an initial matter the Commission must also clearly define the goals it (and Congress) is attempting to achieve in the 1996 Act, and in particular, Sections 251(c)(3) and 252(d)(1) thereof. Catena believes that the paramount concern of the Commission should be the goal of expediting the availability of advanced services to all Americans. Catena also believes that this can best be accomplished by eliminating the current disincentives for investment and encouraging facilities-based competition.

¹⁴ SBC, pursuant to a condition in the *Project Pronto Waiver Order*, FCC 00-336 (rel. Sep. 8, 2000) at ¶34, has deployed remote terminal cabinets with 15% extra space or constructed adjacent facilities to accommodate collocation by competitive carriers at an added cost of millions of dollars. However, Catena understands that there apparently have been no requests by the competitive carriers to collocate in those spaces, which indicates that the investment in the additional space was wasteful.

Indeed, as the Commission explained in the *Notice* in discussing the *UNE*

Remand Order:

In addition, the Commission emphasized that “unbundling rules that are based on a preference for development of facilities-based competition in the long run will provide incentives for both incumbents and competitors to invest and innovate, and should allow the Commission to reduce regulation once true facilities-based competition develops.”

Conversely, attempting to artificially support intra-modal competition for broadband services by requiring the ILECs to unbundle (and then re-bundle) the network elements used to provide advanced services and price those re-bundled elements for competitors at non-compensatory rates will discourage ILEC investment in new technologies. In this latter situation, there will be neither intra- nor inter-modal competition, because the ILECs will not have the requisite incentive to make the necessary (and significant) investments for deploying new technologies.¹⁵

The benefits of facilities-based broadband competition are manifold. Customers will be able to choose from a range of innovative offerings, instead of taking the same service merely “labeled” differently. Indeed, such competition will foster continuing investment and innovation in order to survive and win in the marketplace. In addition, as the events of September 11th made clear, the availability of multiple, facilities-based networks provide redundancy and faster restoration from man-made or natural disasters. The availability of narrowband wireless networks allowed a measure of voice traffic to resume promptly in New York City, notwithstanding the significant damage wrought to the incumbent carrier’s network by the attacks on the World Trade Center. Similar backup and restoration alternatives should exist for broadband services as well, and they

¹⁵ *Notice* at ¶¶ 23-24.

will if there is facilities-based broadband competition among the wireline telephone networks, cable service providers, terrestrial wireless carriers and satellite service providers.

Such competition will not emerge and grow, however, if the wireline carriers are faced with disincentives for investment in new broadband capabilities. Unfortunately, as Catena and the Commission are observing in the marketplace, the current broadband regulatory environment is not conducive to new investment by the ILECs.¹⁶ In order to eliminate these disincentives to new investment, the Commission should either not require ILEC unbundling of the network elements used for the provision of broadband Internet access services, or at the very least not require that such elements or services be provided to competitors based on hypothetical, incremental costs.

In deciding what unbundling obligations should be applied to the ILECs, the Commission should not consider these issues in isolation, but should do so in the context of the multiple, interrelated proceedings it has initiated. A consistent, rational regulatory framework developed in this manner will ensure that competition occurs on a “level playing field.” In addition, such a holistic approach takes into account all of the relevant regulatory paradigms. Indeed, Catena observes that the overarching principles enunciated by the Commission in the *Cable Modem Framework Proceeding* are equally applicable to wireline carriers’ provision of high-speed Internet access services: encourage the availability of broadband services to all Americans; preserve the vibrant market for the Internet; broadband services should exist in a minimal regulatory

¹⁶ See pp. 5-6, *supra*.

environment; and create a rational regulatory framework for competing services provided over different technologies and network architectures.¹⁷

In undertaking such a comprehensive view, Catena believes the Commission can start from the premise that the Section 251 unbundling obligation on the ILECs only applies to network elements that will be used “for the provision of a telecommunications service,”¹⁸ and the Commission has seemingly concluded in the context of cable modem service that broadband Internet access service is an “information service” provided over “telecommunications.”¹⁹ Thus, a consistent classification of broadband Internet access services would lead to the conclusion that the ILECs do not have to unbundle their networks for the provision of broadband Internet access services.

Such a consistent interpretation has the beneficial effect of producing a level regulatory playing field for the wireline carriers and cable service providers. In this regard, Catena observes that in its *Cable Modem Framework Proceeding*, the Commission has not proposed the imposition of unbundling obligations or TELRIC pricing on the cable companies’ provision of broadband Internet access services. Moreover, consistent regulatory treatment of the cable and wireline services and facilities means that competition would not be skewed by asymmetric regulation.²⁰ As a result,

¹⁷ *Cable Modem Framework Proceeding* at ¶¶ 4-6 and 73.

¹⁸ 47 U.S.C. § 251(c)(3).

¹⁹ *Cable Modem Framework Proceeding* at ¶¶ 31-71.

²⁰ In the *Cable Modem Framework Proceeding*, the Commission acknowledged that the presently unregulated cable modem service accounts for over two-thirds of residential broadband subscribers today. *Cable Modem Framework Proceeding* at ¶ 9.

marketplace forces, and not regulatory intervention, would determine the outcome of inter-modal competition.

At the same time, such an interpretation of the ILECs' unbundling obligations for high-speed Internet access services would not sacrifice intra-modal competition. As the Commission observed in its NPRM with regard to the appropriate regulatory framework for broadband access to the Internet over wireline facilities, the Commission retains authority under Title I to impose regulatory requirements, such as Computer II and Computer III non-discrimination and access obligations, on the ILECs' provision of high-speed Internet access services.²¹ Thus, competing service providers would presumably still be able to utilize the ILECs' network and/or services to provide their own high-speed Internet access services, but without the investment disincentives that exist today with the threat of unbundling, re-bundling and TELRIC pricing requirements.

IV. THE COMMISSION SHOULD AVOID THE IMPOSITION OF REGULATIONS THAT WOULD DISCOURAGE PARTICULAR TECHNOLOGY

Catena is concerned with one of the options set forth in the *Notice* – the Commission's suggestion that it might be appropriate to distinguish between existing facilities and new construction in determining unbundling obligations.²² Catena believes that such distinctions could prove unworkable, or worse yet, could affect the type of technology an incumbent carrier deploys to provide advanced services. As discussed above, Catena's initial product is the CNX-5 Broadband ADSL system for upgrading SLC-5 remote carrier systems. One of the prominent features of the CNX-5 system that

²¹ See *Wireline Broadband NPRM*.

makes it so economical is the fact that the carriers can deploy the DSL service using much of the current SLC-5 remote terminal system, without displacing any of the POTS lines or needing to modify the cabinet or other equipment. In order to provision DSL service, the carrier simply substitutes (i) a Catena Enhanced Channel Unit integrated linecard that provides both POTS and DSL service for a current linecard providing POTS only service; and (ii) a Catena Enhanced Channel Test Unit ATM multiplexer card (which provides for testing of POTS and DSL service, as well as multiplexing and management of the DSL service) in place of the current test unit card (which provides only the testing functionality).

By maximizing the use of the embedded plant, the CNX-5 makes it possible to provide broadband service on a scaleable basis to customers served by SLC-5 remote terminals, many of whom are in suburban or rural areas. These customers are unlikely to otherwise have the opportunity to obtain wireline broadband service, because it would be uneconomical to replace the SLC-5 remote terminals *in toto*, or otherwise to deploy an “overlay” remote DSLAM in or adjacent to the SLC-5 cabinet.

However, Catena is concerned that if the Commission adopts the proposal to differentiate the unbundling obligations depending on whether existing facilities or entirely new construction is used, then the unbundling obligations that would presumably attach to Catena’s CNX-5 systems (because it involves only an incremental addition of new equipment) would perpetuate the current disincentives for investment for this type of equipment. In situations where removing and replacing a SLC-5 remote terminal in its entirety is an option, then the competitive balance between Catena’s CNX-5 and an

²² Notice at ¶ 50.

entirely new system would be skewed. In situations where such replacement would not be economical, then a carrier might simply forego installing a CNX-5 upgrade because of unbundling requirements, even though it would otherwise be prudent to provide its customers with broadband access using Catena's product. In addition, Catena thinks it might be unworkable for the Commission under such a differentiated approach to attempt to determine, on a case-by-case basis, when the incremental investment in an upgrade would be sufficient to trigger a "no unbundling" rule. For all of these reasons, Catena urges the Commission not to attempt to create differing unbundling obligations, depending on whether "new construction" is involved.²³

V. THE ROLE OF THE STATES

The *Notice* also seeks comment on the role of the state commissions with respect to the unbundling requirements imposed on the ILECs.²⁴ Catena's concern is that with respect to broadband services, inconsistent state-imposed unbundling obligations would frustrate a national policy that seeks to foster the deployment of advanced services to all Americans. As discussed above, Catena believes it is critical that the Commission eliminates the disincentives that exist today with regard to ILEC investment in new broadband technologies. Allowing states to adopt requirements that re-institute those investment disincentives would prevent broadband services and broadband competition from flourishing throughout the country, to the detriment of the public interest.

²³ If the Commission nonetheless decides to take such a bifurcated approach, it should make clear that upgrades such as Catena's would be categorized as "new construction," even though it makes substantial use of the embedded facilities.

²⁴ *Notice* at ¶¶ 75-76.

The Commission presumably is attempting to develop a rational, holistic broadband policy that applies across different platforms uniformly through its initiation of the interrelated proceedings. In a similar vein, the Commission should ensure that the policy it adopts with regard to the unbundling of broadband services and facilities also applies uniformly across the nation. Indeed, in the context of developing policies for cable modem service, the Commission acknowledged the importance of establishing a national policy:

We would be concerned if a patchwork of State and local regulations beyond matters of purely local concern resulted in inconsistent requirements affecting cable modem service, the technical design of the cable modem service facilities, or business arrangements that discouraged cable modem service deployment across political boundaries. We also would be concerned if State and local regulations limited the Commission's ability to achieve its national broadband policy goals to "promote the deployment of advanced telecommunications capability to all Americans in a reasonable and timely manner," "to promote the continued development of the Internet and other interactive computer services and other interactive media" and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."²⁵

These same concerns and policies are equally applicable to wireline carriers' provision of broadband services.

Moreover, these concerns are not mere hypotheticals. State Commissions have already begun to assert jurisdiction over the ILECs' broadband services, and even applied pricing rules that are inconsistent with FCC decisions. For example, the Department of Public Utility Control for the State of Connecticut recently required the telephone

²⁵ *Cable Modem Framework Proceeding* at ¶ 97, quoting 47 U.S.C. § 157 note, §230(b)(1), (2).

company to provide DSL transport service at a 25.4% wholesale discount,²⁶ notwithstanding the fact that the Commission had previously held that such services were not retail offerings subject to such a discount.²⁷ The Public Utilities Commission of the State of California recently asserted that it has concurrent jurisdiction over DSL transport service, notwithstanding its admittedly interstate nature.²⁸ Without action by the Commission making clear that a uniform national broadband policy applies, the states could continue to re-introduce uncertainty and disincentives to ILEC investment in new technologies.

The Commission must act quickly to establish a national policy, or else the “patchwork” that has already begun to spring up will turn into large areas where broadband investment by the ILECs never occurs. Without such investment, inter-modal competition will not thrive and end users will have little, if any, access to broadband services. The public interest clearly would be disserved by such a development. Catena thus urges the Commission to act expeditiously in this and the other interrelated proceedings to adopt a rational national broadband policy, and to make clear in all of those proceedings that state decisions that frustrate that federal policy are preempted.

²⁶ *Petition of DSLnet Communications, LLC Regarding Obligations of the Southern New England Telephone Company*, Docket No. 01-01-17 (March 28, 2002)

²⁷ *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, FCC 99-330, Second Report and Order (rel. Nov. 9, 1999); *aff’d*, *Association of Communications Enterprises v. FCC*, 253 F.3d 29 (D.C. Cir. June 26, 2001).

²⁸ *California ISP Association, Inc. v. Pacific Bell Telephone Company*, Case 01-07-027 (March 28, 2002) at p. 6.

VI. CONCLUSION

Catena believes the Commission has embarked on a critical journey by initiating this and several other interrelated proceedings. The goals are laudable – developing a rational broadband policy that will encourage investment in new technology, foster facilities-based competition and make broadband services available to all Americans. The Commission must act quickly to complete this journey, and indeed, can take some interim steps to eliminate some of the uncertainty presently surrounding the deployment of broadband services from remote terminals. The current uncertainty and the threat of unbundling at uneconomic prices is already stifling investment by the incumbent carriers. Finally, the Commission must ensure that the “holistic” broadband policy applies across all of the states, so that the uncertainty and disincentives are not re-introduced on a state-by-state basis. Catena believes that such a series of decisions concluded as rapidly as possible will best serve the public interest.

Respectfully submitted,

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